

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,       :     CIVIL ACTION  
    Plaintiff,                    :  
                                  :  
    v.                             :  
                                  :  
HERMAN MARTIN                    :  
    Defendant.                   :     No. 00-CV-303

**MEMORANDUM & ORDER**

**J.M. KELLY, J.**

**FEBRUARY       , 2001**

Presently before the Court is the Motion to Dismiss, or in the Alternative, to Transfer filed by the Defendant, Herman Martin ("Martin"). Plaintiff, the United States of America ("U.S."), filed this declaratory judgment action to obtain a declaration that it is not required to make further maintenance and cure payments to Martin. Martin seeks to have the present Complaint dismissed in favor of the Complaint he has filed in the United States District Court for the Southern District of Texas, or in the alternative, have the suit transferred to the Southern District of Texas.

**BACKGROUND**

Martin is a merchant seaman and was employed aboard the USNS INVINCIBLE. The U.S. owns the USNS INVINCIBLE and Maersk Line, Limited ("Maersk") operated the ship as its agent. Martin alleges that he injured his back while working on October 15, 1999. Medical staff examined Martin's back on board the USNS INVINCIBLE and a physician examined his back at a subsequent port

of call. A Navy physician diagnosed Martin with a lumbar sacral sprain and he was discharged from his duties on the USNS INVINCIBLE. Martin then returned to his home in Philadelphia, and Maersk immediately began to make payments to Martin and arrange for medical care in order to meet its obligation for maintenance and cure. Maersk arranged to have Martin examined by an orthopedic specialist in Philadelphia on November 11, 1999. While Martin initially agreed to the appointment, he subsequently failed to attend or reschedule the appointment. On November 24, 1999, Maersk learned that Martin had already been examined in Houston, Texas, on November 5, 1999, by an orthopedic specialist, Dr. James Ghadially ("Ghadially").

On January 10, 2000, Martin filed a Complaint in the Southern District of Texas under the Jones Act, 46 U.S.C. § 688 (1994).<sup>1</sup> Martin named Maersk as the sole defendant in his personal injury action. In his Complaint, Martin alleged that he was a resident of the Commonwealth of Pennsylvania. Maersk filed a motion to dismiss or for summary judgment on February 7, 2000, in which it alleged that the Texas court lacked jurisdiction over Maersk, pursuant to 46 U.S.C. § 781 (allowing damages against U.S. where U.S. owns vessel causing damages), and improper venue pursuant to 46 U.S.C. §§ 742 & 782. On March 17, 2000, the court granted Martin's Motion for a voluntary non-suit and dismissed

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<sup>1</sup> C.A. NO. G-99-761

the Complaint against Maersk.

On January 14, 2000, the U.S. filed the instant declaratory judgment action in the Eastern District of Pennsylvania. Martin was served with the Complaint at his home in Philadelphia on February 12, 2000. On March 15, 2000, Martin filed suit in the Southern District of Texas, against the U.S., for personal injuries under the Jones Act. In this, the second of Martin's Complaints, Martin alleges that he resides in Texas. Martin subsequently filed this Motion to Dismiss, or in the Alternative, to Transfer venue.

#### **DISCUSSION**

The Court may issue a declaratory judgment in a case where there is an actual controversy in order to define the rights of a party seeking to have a declaration of its rights and obligations. 28 U.S.C. § 2201. Declaratory relief is only appropriate when the controversy submitted is: (1) substantial; (2) between parties having adverse legal interests; and (3) sufficiently immediate and real to warrant a declaration of the rights of the parties. Maryland Cas. Co. v. Pacific Coal & Oil Co., 312 U.S. 270, 273 (1941).

A seaman injured while serving aboard a vessel is entitled to "maintenance and cure" under the general maritime law. O'Connell v. Interocean Mgmt. Corp., 90 F.3d 82, 84 (3d Cir. 1996). "Maintenance is the living allowance for a seaman while

he is ashore recovering from injury or illness. Cure is payment of medical expenses incurred in treating the seaman's injury or illness." Barnes v. Andover Co., 900 F.2d 630, 633 (3d Cir. 1990). Maintenance and cure is a broad contractual obligation that is not dependant upon the fault or the negligence of the shipowner. Aguilar v. Standard Oil Co., 318 U.S. 724, 730-31 (1943). The employer's obligation to provide maintenance and cure continues until the seaman has reached maximum cure, either when the condition is cured or when the condition is diagnosed as permanent and incurable. Barnes, 900 F.2d at 634. Unreasonable failure to pay maintenance and cure may result in an award of consequential damages to the employee, including lost wages, pain and suffering, attorney fees and costs. O'Connell, 90 F.3d at 84.

Corollary to the shipowner's obligation to provide maintenance and cure is the shipowner's entitlement to monitor the seaman's medical condition to determine when cure has occurred. See Rowan Cos. v. Griffin, 876 F.2d 26, 28 (5th Cir. 1989) (holding declaratory judgment action appropriate vehicle to determine whether seaman entitled to additional maintenance and cure). Similarly, the shipowner is entitled, within reasonable medical bounds, to direct the seaman's care, even if it is inconvenient or painful; the seaman's refusal of appropriate treatment is insufficient to place a burden upon the shipowner to

alter the seaman's course of treatment. Murphy v. American Barge Line Co., 169 F.2d 61, 63-64 (3d Cir. 1948).

Here, Martin has failed to attend a medical examination, has refused to schedule a medical examination and has traveled from Philadelphia to Houston to seek alternative medical care. Absent a declaratory judgment, the U.S. would be required to either continue to pay maintenance and cure without the ability to determine whether Martin had achieved cure, or terminate payments to Martin upon the possible sanction of consequential damages. Therefore, the controversy is substantial, the parties are adverse and the potential for damages is immediate and real. This is an appropriate case to be determined in a declaratory judgment action.

Venue in admiralty is proper in the district where the plaintiff resides. 46 U.S.C. § 742. As a defendant in a declaratory judgment action who could seek to secure maintenance and cure, Martin is, de facto, the plaintiff in the underlying controversy. See Maryland Cas., 312 U.S. at 273. As such, venue was proper in the Eastern District of Pennsylvania at the time that the U.S. filed its Complaint and served Martin. Where venue is proper in an action for maintenance and cure, the action cannot be dismissed for improper venue. While a case may be transferred to another district where venue is also proper, at the time this case was filed and process was served, the Eastern

District of Pennsylvania was the only district where Martin resided. That Martin subsequently moved does not create new venue for this case in the Southern District of Texas.

A final issue before the Court is the U.S.'s request that the Court enjoin Martin from litigating his case in Texas. Under the "first filed" rule, the court that first obtained jurisdiction over a question generally must decide it. EEOC v. University of Pennsylvania, 850 F.2d 969, 971 (3d Cir. 1988). The Court has the inherent power to enjoin parties from pursuing an issue that they subsequently filed in another district court. Id. While Martin filed his initial action against Maersk before the U.S. filed this case, the Maersk case was dismissed because it suffered from improper venue and named an improper party. The instant case was filed two months before the second case in Texas. As both cases seek to define Martin's entitlement to maintenance and cure, the Court will enjoin Martin from seeking maintenance and cure in the Texas action.

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	:	
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Defendant.	:	NO. 00-CV-303

**O R D E R**

AND NOW, this        day of February, 2001, upon consideration of the Motion to Dismiss, or in the Alternative, to Transfer (Doc. No. 15) filed by the Defendant, Herman Martin, the Response of Plaintiff, the United States of America, and Herman Martin's Reply thereto, it is ORDERED:

1. The Motion to Dismiss, or in the Alternative, to Transfer, is DENIED.

2. Herman Martin is ENJOINED from litigating the issue of maintenance and cure in an action entitled Herman G. Martin v. United States of America, No. G-00-155, filed in the United States District Court for the Southern District of Texas.

BY THE COURT:

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JAMES MCGIRR KELLY, J.